REMARKS/ARGUMENTS

The Office Action mailed July 12, 2004 has been carefully considered. Reconsideration in view of the following remarks is respectfully requested.

Claims 1, 2, 5, 6, 14, 20-22, 25 and 26 have been amended to further particularly point out and distinctly claim subject matter regarded as the invention. Support for these changes may be found in the specification, page 8, lines 14-22. The text of claims 3, 4, 7-13, 15-19, 23, 24 and 27-33 is unchanged, but their meaning is changed because they depend from amended claims.

Record of Interview

On June 8, 2004, an interview was conducted by telephone between Examiner Philip C. Lee and Marc S. Hanish, Reg. No. 42,626. Applicants thank the Examiner for granting this interview. The details of the interview are set forth in the Interview Summary document made of record.

The 35 U.S.C. § 112, Second Paragraph Rejection

Claims 1-13 and 20-33 were rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter applicant regards as the invention. This objection is respectfully traversed.

The Office Action states that "it is unclear if 'said fixed location' refers to a client computer or a DNS server. If said fixed location refers to a DNS server, then is it possible to receive a DNS request from said fixed location in line 6."

Applicant has amended the claims to make clear that the "fixed location" is a client DNS server. Applicant has also amended the claims to remove the "receiving a DNS request" to remove the inconsistency. Support for this change can be found in the Specification at FIG. 2, and the corresponding text.

The 35 U.S.C. § 102 Rejection

Claims 14 and 16-18 were rejected under 35 U.S.C. § 102(#) as being allegedly anticipated by Emens et al.[1], among which claim14 is an independent claim. This rejection is respectfully traversed.

According to the M.P.E.P., a claim is anticipated under 35 U.S.C. § 102(a), (b) and (e) only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.[2]

Applicant respectfully submits that Emens does not teach or suggest "a data receiver" as defined by the specification. Claim 14 has been amended to make clear that the "fixed location" is a "client DNS server". As such, the data receiver as defined by the specification as receiving

[1] U.S. Patent 6,606,643

[2] Manual of Patent Examining Procedure (MPEP) § 2131. See also *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

"data from the fixed location 154 as to the transit times of each of the content serving sites" (page 17, lines 6-7), must necessarily receive the data from the client DNS server in this claim. Emens does not teach receiving this data from a client DNS server, and thus cannot teach "a data receiver" as defined by the Specification. Applicant respectfully submits that claim 14 is now in condition for allowance.

As to dependent claims 16-18, the argument set forth above is equally applicable here. The base claims being allowable, the dependent claims must also be allowable.

The First 35 U.S.C. § 103 Rejection

Claim 15 was rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Emens. This rejection is respectfully traversed.

As to dependent claim 15, the argument set forth above is equally applicable here. The base claim being allowable, the dependent claim must also be allowable.

The Second 35 U.S.C. § 103 Rejection

Claims 1-5, 7-13, 19-25 and 27-33 were rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Emens in view of Midorikawa et al.[3] and Shah et al.[4], among which claims 1, 20 and 21 are independent claims. This rejection is respectfully traversed.

[3] U.S. Patent 5,953,708
[4] U.S. Patent 6,446,121

Neither Emens nor Midorikawa teach sending transit time requests to each of the *n* fastest content serving sites and *m* other content serving sites

Applicant respectfully points out that it is unclear from the Office Action which piece of prior art (or whether a combination) is used to teach "sending transit time request to each of the *n* fastest content serving sites and *m* other content serving sites". In paragraph 18, the Office Action appears to allege that Midorikawa teaches this element, but it seems clear that Midorikawa does not teach transit time requests. More specifically, however, neither Emens nor Midorikawa teaches limiting the transit time requests to one or more of the "fastest" sites. Applicant has amended the claims to indicate that *n* must be greater than 0, so as to eliminate the possibility that the transit time requests are sent without regard for the transit times for the mirror sites. Since the claims now make clear that the transit times are limited based on the transit times for the mirror sites, Applicant respectfully submits that the claims are now in condition for allowance. Emens may teach sending transit time requests to only a subset of the entire set of mirror sites, but it does not indicate how such a subset is chosen. Basically, there is no indication in either Emens or Midorikawa or their combination as to a phased-type approach as described by the claims, where transit times themselves are utilized to determine to which sites to send transit time requests. As such, Applicant respectfully submits that claim 1 is now in condition for allowance.

Shah does not teach receiving data from said client DNS server as to the transit times of each of the *n* fastest content serving sites and m other content serving sites

Claim 1 as amended modifies the "fixed location" element to read "client DNS server". This is in line with what is described in the Specification at FIG. 2 and the corresponding text. Shah, however, receives its data from the DRP agents, which are not located on the client side. Column 7, lines 2-11 state "Each DRP agent 510, 516, 618, then sends a RTT probe to an approximate location of the client 502, such as to the local domain server 504. The local domain name server 504 then replies to the RTT probe back to the DRP agents 510, 516, and 518. DRP agents 510, 516, 518 can then each calculate its own RTT. Each DRP agent 510, 516, 518, then replies to the distributed director 506 with its own RTT. The distributed director 506 can then compare the various RTT's and determine the best mirrored service." Thus, Shah does not teach receiving data from said client DNS server as to the transit times of each of the n fastest content serving sites and m other content serving sites, as it receives the data from the serving sites themselves. As such, Applicant respectfully submits that claim 1 is now in condition for allowance.

Claims 20-21 contain similar elements as claim 1 described above, and thus Applicant respectfully submits these claims are also in condition for allowance.

As to dependent claims 2-5, 7-13, 19, 22-25 and 27-33, the argument set forth above is equally applicable here. The base claims being allowable, the dependent claims must also be allowable.

The Third 35 U.S.C. § 103 Rejection

Claims 6 and 26 were rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Emens, Midorikawa and Shah et al. in view of Jindal et al.[5]. This rejection is respectfully traversed.

As to dependent claims 6 and 26, the argument set forth above is equally applicable here. The base claims being allowable, the dependent claims must also be allowable.

In view of the foregoing, it is respectfully asserted that the claims are now in condition for allowance.

Conclusion

It is believed that this Amendment places the above-identified patent application into condition for allowance. Early favorable consideration of this Amendment is earnestly solicited.

If, in the opinion of the Examiner, an interview would expedite the prosecution of this application, the Examiner is invited to call the undersigned attorney at the number indicated below.

[5] U.S. Patent 6,324,580

Applicant respectfully requests that a timely Notice of Allowance be issued in this case. Please charge any additional required fee or credit any overpayment not otherwise paid or credited to our deposit account No. 50-1698.

Respectfully submitted,

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Dated: 8/9/04

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